

ORIGINAL

LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED

1111 NINETEENTH STREET, N.W.

SUITE 1200

WASHINGTON, D.C. 20036

(202) 857-3500

EX PARTE OR LATE FILED

RUSSELL D. LUKAS
DAVID L. NACE
THOMAS GUTIERREZ
ELIZABETH R. SACHS
GEORGE L. LYON, JR.
JOEL R. KASWELL
PAMELA L. GIST
DAVID A. LAFURIA
MARILYN SUCHECKI MENSE
PAMELA GAARY HOLRAN
B. LYNN F. RATNAVALE
TODD SLAMOWITZ
DAVID M. BRIGLIA⁺
ALLISON M. JONES⁺

⁺ NOT ADMITTED IN D.C.

RECEIVED

JUL 17 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 17, 2000

CONSULTING ENGINEERS
ALI KUZEHKANANI
LEROY A. ADAM
LEILA REZANAVAZ
AHMAD EL-OMAR

OF COUNSEL
JOHN J. MCAVOY
J.K. HAGE III⁺

TELECOPIER
(202) 842-4485

Email: lngs@fcclaw.com
http://www.fcclaw.com

WRITER'S DIRECT DIAL

(202) 828-9470
tgutierrez@fcclaw.com

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-B204F
Washington, D.C. 20554

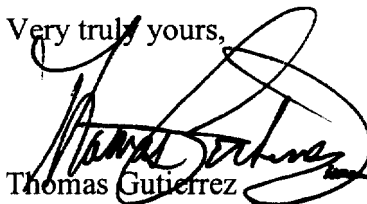
Re: *Re-auction of Certain C and F Block Broadband PCS Licenses*
WT Docket No. 97-82

Dear Ms. Salas:

This is to advise you that Thomas Sullivan of TeleCorp PCS, Inc. and the undersigned met with Bryan Tramont of Commissioner Harold Furchtgott-Roth's office, Adam Krinsky of Commissioner Gloria Tristani's office, and Mark Schneider of Commissioner Susan Ness' office on July 12, 2000. We also met with Clint Odom of Chariman William Kennard's office on July 14, 2000. The matters discussed in those meetings are set forth in the attached correspondence of this date.

In the event any questions arise with respect to the referenced matter, please communicate directly with the undersigned.

Very truly yours,



Thomas Gutierrez
Counsel for TeleCorp PCS, Inc. and

Enclosure
TG:jmm

No. of Copies rec'd 012
List A B C D E

LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED

1111 NINETEENTH STREET, N.W.

SUITE 1200

WASHINGTON, D.C. 20036

(202) 857-3500

CONSULTING ENGINEERS

ALI KUZEHKANANI

LEROY A. ADAM

LEILA REZANAVAZ

AHMAD EL-OMAR

—

OF COUNSEL

JOHN J. MCAVOY

J.K. HAGE III⁺

TELECOPIER

(202) 842-4485

Email: Ings@fcclaw.com

<http://www.fcclaw.com>

WRITER'S DIRECT DIAL

(202) 828-9470

tgutierrez@fcclaw.com

RUSSELL D. LUKAS
DAVID L. NACE
THOMAS GUTIERREZ
ELIZABETH R. SACHS
GEORGE L. LYON, JR.
JOEL R. KASWELL
PAMELA L. GIST
DAVID A. LAFURIA
MARILYN SUCHECKI MENSE
PAMELA GAARY HOLRAN
B. LYNN F. RATNAVALE
TODD SLAMOWITZ
DAVID M. BRIGLIA⁺
ALLISON M. JONES⁺

⁺ NOT ADMITTED IN D.C.

July 17, 2000

Clint Odom, Wireless Assistant
Office of Chairman William Kennard
Federal Communications Commission
445 12th Street, SW, Room 8-B201N
Washington, DC 20554

Mark Schneider, Wireless Assistant
Office of Commissioner Susan Ness
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, DC 20554

Bryan Tramont, Wireless Assistant
Office of Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20554

Adam Krinsky, Wireless Assistant
Office of Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20554

Peter Tenhula, Wireless Assistant
Office of Commissioner Michael Powell
Federal Communications Commission
445 12th Street, SW, Room 8-A204F
Washington, DC 20554

Re: *WT Docket 97-82*

Gentlemen:

On behalf of TeleCorp PCS, Inc. ("TeleCorp") and Tritel Communications, Inc. ("Tritel"), (collectively, "TeleCorp/Tritel") we write to provide further input with respect to the referenced matter.

Rather than re-hash matters already discussed with you and already addressed in TeleCorp/Tritel pleadings submitted before the Commission, we focus on a limited, but critical number of matters that are either new or have been subjected to substantially revised and new arguments at the reply pleading stage, or later.

Grandfathering

As you are no doubt aware, the Commission's established grandfathering rules have come under attack of sorts from both the largest of the nation's carriers and from some (but certainly not all) of the newest entrants who are claiming entrepreneurial status. TeleCorp/Tritel's position on this matter is clear: grandfathering, a long standing Commission rule for this PCS spectrum, is a critical part of a "covenant" established between the Commission and prior C Block applicants. The unquestioned goal of grandfathering is to provide initial C Block applicants, many of whom suffered substantial losses because of the way in which the bidding was undertaken in the initial C Block auction, a first, genuine opportunity to compete for this spectrum. It is in this regard that it cannot be understated that this spectrum is not newly allocated in any sense, was allocated several years ago, and is only now being made genuinely available to entrepreneurs.

TeleCorp/Tritel is one of two entrepreneurs who has been singled out as not "looking" like an entrepreneur because of its size and, therefore, is argued to no longer be in need of the benefits associated with the set aside. Few things could be further from the truth. First, although TeleCorp/Tritel's assets are large enough to extend beyond the entrepreneur's cap, those assets are largely "paper assets", as evidenced by the fact that the market cap for the combined companies dropped nearly fifty percent in a single week this spring. Also, those assets are but a very small fraction of the assets of the truly large companies, thus negating any *bona fide* claim of equality of position. More importantly, the way in which TeleCorp/Tritel has grown is critically important here. When the Commission adopted its entrepreneurial rules, it recognized that over time entrepreneurs would grow -- and in fact, it overtly encouraged them to do so. Specifically, the Commission urged them to grow and to become "strong competitors". TeleCorp/Tritel has done just that, and it has done it in just the way that the Commission envisioned. To now argue that having complied with the rules, and the Commission's urging, TeleCorp/Tritel has somehow outgrown its status borders on the ludicrous.

One final matter on how TeleCorp/Tritel "looks" is critical. These companies embody the very spirit of entrepreneurship that the Commission envisioned when it adopted its rules, especially as it revised those rules immediately following the *Adarand* decision. Specifically, these companies have successfully assured that women, minorities and other under-represented groups play a major role in these companies. As reported in comments previously submitted to the Commission, TeleCorp's minority employment is near the fifty percent level and Tritel's is near the twenty-five percent level. This minority participation is spread over virtually all minority groups, and several of the service areas of TeleCorp/Tritel are predominantly minority, including San Juan, Puerto Rico, the nation's largest predominantly Hispanic city. All of this, TeleCorp/Tritel submits, demonstrates what an entrepreneur *should* look like, and stands in stark contrast to many of the hiring practices of established carriers in the industry.

The objectives of the largest carriers with respect to grandfathering appear to be clear. First, by attempting to take away the strongest of the entrepreneurs (i.e., those who require grandfathering to remain eligible), they seek to undermine the entire argument supporting a set aside. They may also be intent upon "embarrassing" the Commission by causing the proceeds for any set aside spectrum to be lower than otherwise would be the case, in the event that the Commission holds true to its commitment to entrepreneurs. From the perspective of the newest carriers, their arguments appear to be premised primarily on competitive

advantages that they would reap in the event that grandfathering were extinguished or limited. While understandable, their wants are hardly impressive. In fact, because the newest carriers never participated in the first C Block auction, their claim to entrepreneurial status appears to be much weaker, not stronger, than TeleCorp/Tritel's.

A final word on grandfathering is appropriate here. First, the Commission's grandfathering rules themselves already constitute a "compromise" in the sense that gracious growth only as prescribed by the Commission is permitted, and the duration of the grandfathering is limited in time. These compromises are significant in a number of ways. They evidence established mechanisms to avoid outrageous situations where entities who have grown through means completely unassociated with entrepreneurial spectrum, possibly even through non-domestic operations, would be rewarded. In addition, by limiting the duration of grandfathering rights it makes impossible huge growth that may occur over a considerable number of years. For the record, both TeleCorp and Tritel's operations are entirely domestic, and are entirely PCS oriented. Thus, the Commission's "incubator" approach contemplated in its rules has been fulfilled in the instance of TeleCorp/Tritel.

Removal of Transfer Restrictions

TeleCorp/Tritel is cognizant that a number of entities have advocated removal of the established restrictions on transferability of entrepreneurial licenses. TeleCorp/Tritel is fully prepared, and fully expects, to abide by its commitment to the Commission to hold the licenses at least throughout the established five-year holding period, and quite possibly long after. Nevertheless, TeleCorp/Tritel has no desire to impede or to prevent other entrepreneurs from transferring authorizations earlier, if special circumstances warrant. In this regard, TeleCorp/Tritel firmly believes that the Commission's waiver processes, possibly combined with presumptions of grantability of a waiver in the event that certain build out criteria have been met, would fully accommodate any genuine need for flexibility. Indeed, were the Commission to go further, and to rollback its rules limiting transfers entirely, the effects could be unforeseen and devastating. Particularly, the Commission could be faced with a rash of assignments that would not be truly voluntary, and instead would be triggered by the investor groups in the entrepreneur companies rather than the qualified components of the companies for whom the Commission designed the rules to protect in the first place. In sum, because any *bona fide* needs can be met through a waiver process, and because more widespread relief would be problematic, TeleCorp/Tritel urges the Commission to utilize only waiver standards to permit transfers in *bona fide* situations.

Build Out

A core argument of the largest carriers to support their claimed need for new spectrum has been that such is necessary for service to be made available to the public quickly. In its comments and reply comments, TeleCorp/Tritel has already debunked this tired argument. It has demonstrated that many "nationwide" carriers provide coverage that is limited to large cities, and not the areas that surround them. It has also advised the Commission that other of the largest carriers in the nation have made use of entrepreneurs, such as TeleCorp and Tritel, to provide service to rural areas – a class of service area specifically earmarked for service by the 1993 amendments to the Communications Act. More recently, TeleCorp/Tritel has had an opportunity to review the five-year build-out showings submitted in many of the A and B Block markets. To no surprise, many of the largest carriers have less than impressive build-out showings. In some instances, they have had to rely in considerable part on the spectrum that has been built out by their affiliates. In others, the largest carriers have had to rely entirely on their affiliates for build-out

and effectively made no showing of any build-out themselves. Whereas TeleCorp/Tritel does not argue that such inactivity is violative of the rules or is inherently problematic, it does submit that the lack of build-out undermines completely the affirmative argument presented, time and time again, that only the largest carriers can build out and provide service quickly.

Litigation Concerns

The Commission should not be influenced by threats of litigation in the event that its rules are made to read the way that some particular group wants. The unassailable fact is that litigation is a possibility regardless of what the Commission does. Equally clear is the fact that the Commission's burden to show reasonableness is always higher when it changes rules, than it is when it maintains them.

We thank you for your consideration of these very important matters.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Thomas Gutierrez', with a large, stylized flourish extending from the end of the signature.

Thomas Gutierrez
Counsel for TeleCorp PCS, Inc and
Tritel Communications, Inc.

cc: Thomas Sugrue
Kathleen O'Brien Ham
Magalie Roman-Salas
TG:jmm